IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.248 OF 2004

Vidya Mohan Mahalinge ...Applicant

Vs.

The State of Maharashtra & Anr. ...Respondents

Shri. R.S. Kate for the Applicant.
Shri. S.S. Kulkarni Advocate for the Respondent No.2.

CORAM : A. S. OKA, J.
DATED : JULY 08, 2005.

P.C.:

1. On last two dates the parties were heard fully. The Advocates appearing for the parties have stated that there is no possibility of amicable settlement.

2. The Petitioner is wife and the Respondent No.2 is the husband. Application was made by the Petitioner-wife under section 125 of the Code of Criminal Procedure, 1973 for grant of maintenance. The case of the Petitioner is that she married with the Respondent No.2 on 18th February, 2002 in accordance with Hindu Vedic Rites. The Petitioner has set out other relevant facts which entitle her to claim maintenance from the Respondent No.2.

3. The case of the Respondent No.2 in short is that, he is married to one Rupali @ Rani on 9th May,

1999 and the said Rupali is only legally wedded wife of the Respondent No.2. The Respondent No.2 denied existence of valid marriage between the Petitioner and himself.

4. The learned Magistrate accepted the case of the Petitioner that she was legally wedded wife of the Respondent NO.2 and that the Respondent No.2 has failed to prove his marriage with the said Rupali @ Rani. The learned Magistrate therefore, allowed the Application and granted maintenance. In a revision preferred by the Respondent No.2, the Sessions Court interferred by holding that the Respondent No.2 has established his marriage on 9th May, 1999 with Rupali @ Rani. Therefore, the learned Additional Sessions Judge allowed the Revision Application and order passed by the learned Magistrate was set aside.

5. Shri. Kate, learned Advocate appearing for the Petitioner submitted that considering the limited scope of revision under section 397 ofthe Code of Criminal Procedure, 1973, the learned Additional Sessions Judge ought not have interferred with the finding of fact recorded by the learned Magistrate. He submitted that the proceedings under section 125 of the said Code are summary in nature and there was no reason to upset the finding recorded in proceedings of

summary nature. Shri. Kulkarni, appearing for the Respondent No.2 submitted that the evidence adduced by the Respondent No.2 was not considered by the learned Magistrate and therefore, the learned Additional Sessions Judge was justified in interferring with the decision of the learned Magistrate.

6. I have considered the rival submissions. The Respondent No.2 examined the said Rupali @ Rani who deposed that on 9th May, 1999 her marriage with the Respondent No.2 was solemnised. The Petitioner herein stepped into witness box and she stated that the said Rupali @ Rani was staying with the Respondent NO.2 as second wife. Thus, the Petitioner does not dispute the status of said Rupali @ Rani as a wife of the Respondent No.2. The Respondent No.2 by stepping into witness box deposed regarding solemnisation of his marriage on 09th May, 1999 with Rupali @ Rani and he denied the existence of marriage between the Petitoner and him.

7. There were other witnesses examined by the parties. The other witnesses examined by the Respondent No.2 consistently deposed regarding marriage between Rupali @ Rani and the Respondent No.2. The learned Additional Sessions Judge noted that wedding card was produced and exhibited on record

and infact, the Petitioner did not object to exhibiting the said wedding card. The learned Judge referred to the photographs produced by the Respondent No.2 of his marriage with the said Rupali @ Rani. That is how the learned Additonal Sessions Judge accepted that the Respondent No.2 has established his marriage with Rupali @ Rani on 09th May, 1999. According to the case of the Petitoner her marriage was solemnised on 18th February, 2002.

8. The findings which are recorded by the learned Additional Sessions Judge are based on the oral and documentary evidence on record. As stated earlier, the documentary evidence in the form of wedding card has been admitted in evidence without any objection by the Petitioner. If the judgment of the Additional Sessions Judge is carefully perused, it is clear that there is no perversity. In my view, therefore, no interference is called for in this Petition under Article 227 of the Constitution of India. It is however, to be noted that the findings which are recorded by the learned Additional Sessions Judge are findings in a summary proceedings and therefore, said findings will bind parties to only in the said proceedings. There is no merit in the Petition. Accordingly, Petition is dismissed.

JUDGE